APPENDIX "A".

Article XII, Florida Constitution.

ARTICLE XII.

Education.

Section 1. The Legislature shall provide for a uniform system of public free schools and shall provide for the liberal maintenance of the same.

Section 2. There shall be a Superintendent of Public Instruction, whose duties shall be prescribed by law, and whose term of office shall be four years and until the election and qualification of his successor.

Section 3. The Governor, Secretary of State, Attorney-General, State Treasurer and State Superintendent of Public Instruction shall constitute a body corporate, to be known as the State Board of Education of Florida, of which the Governor shall be President, and the Superintendent of Public Instruction Secretary. This Board shall have power to remove any subordinate school officer for cause, upon notice to the incumbent; and shall have the management and investment of all State School Funds under such regulations as may be prescribed by law, and such supervision of schools of higher grades as the law shall provide.

Section 4. The State School Fund, the interest of which shall be exclusively applied to the support and maintenance of public free schools, shall be derived from the following sources. The proceeds of all lands that have been or may hereafter be granted to the State by the United States for public school purposes. Donations to the State when the purpose is not specified. Appropriations by the State. The proceeds of escheated property or forfeitures. Twenty-five per cent of the sales of public lands which are now or may hereafter be owned by the State.

Section 5. The principal of the State School Fund shall remain sacred and inviolate.

Section 6. A special tax of one (1) mill on the dollar of all taxable property in the State, in addition to the other

means provided, shall be levied and apportioned annually for the support and maintenance of public free schools.

Section 7. Provision shall be made by law for the apportionment and distribution of the interest on the State School Fund, and all other means provided, including the special tax, for the support and maintenance of public free schools among the several counties of the State in proportion to the average attendance upon schools in the said counties respectively.

Section 8. Each county shall be required to assess and collect annually for the support of the public free schools therein, a tax of not less than three (3) mills, nor more than ten (10) mills on the dollar on all taxable property in the same.

Section 9. The county school fund shall consist, in addition to the tax provided for in section eight of this article, of the proportion of the interest of the State school fund and of the one mill State tax apportioned to the county; the net proceeds of all fines collected under the penal laws of the State within the county; all capitation taxes collected within the county; and shall be disbursed by the county board of public instruction solely for the maintenance and support of public free schools.

Section 10. The Legislature may provide for the division of any county or counties into convenient school districts; and for the election biennially of three school trustees, who shall hold their office for two years, and who shall have the supervision of all the schools within the district; and for the levying and collection of a district school tax, for the exclusive use of public free schools within the district, whenever a majority of the qualified electors thereof that pay a tax on real or personal property shall vote in favor of such levy: Provided, that any tax authorized by this section shall not exceed ten mills on the dollar in any one year on the taxable property of the district.

Section 11. Any incorporated town or city may constitute a School District. The fund raised by Section Ten may be expended in the district where levied for building or repair-

ing school houses for the purchase of school libraries and text-books, for salaries of teachers, or for other educational purposes, so that the distribution among all the schools of the district be equitable.

Section 12. White and colored children shall not be taught in the same school, but impartial provision shall be made for both.

Section 13. No law shall be enacted authorizing the diversion or the lending of any County or District School Funds, or the appropriation of any part of the permanent or available school Fund to any other than school purposes; nor shall the same, or any part thereof, be appropriated to or used for the support of any sectarian school.

Section 14. The Legislature at its first session shall provide for the establishment, maintenance, and management, of such Normal Schools, not to exceed two, as the interests of public education may demand.

Section 15. The compensation of all county school officers shall be paid from the school fund of their respective counties, and all other county officers receiving stated salaries shall be paid from the general funds of their respective counties.

Section 16. (Proposed section defeated at general election of 1908.)

Section 17. The Legislature may provide for special tax school districts to issue bonds for the exclusive use of public free schools within any such special tax school district, whenever a majority of the qualified electors thereof who are freeholders shall vote in favor of the issuance of such bonds, but no bonds shall be issued hereunder which shall exceed, together with the existing indebtedness of such special tax school district 20 per cent of the assessed value of the taxable property of such district according to the last assessment for State and County purposes prior to the issuing of such bonds. Any bonds issued hereunder shall become payable within thirty years from the date of issuance in annual instalments which shall commence not more than

three years after the date of issue. Each annual instalment shall be not less than three per cent of the total amount of the issue. Whenever any such special tax school district has voted in favor of the issuance of such bonds a special tax for the payment of the interest on said bonds and the principal thereof as the same shall become due and payable, shall be levied on the taxable property within the district voting for their issuance in accordance with law, providing for the levy of taxes and such tax shall not be applied to any purpose other than the payment of the principal and interest of said bonds.

APPENDIX "B".

Statute Under Which Bonds at Bar Were Issued.

CHAPTER 10,655—(No. 633).

AN ACT to Authorize the Board of Public Instruction of Hernando County, Florida, to Procure a Loan of not Exceeding Seventy-five Thousand Dollars ($75,000.00) and Pay Interest Thereon at a Rate not Exceeding Six Per Cent (6%) Per Annum, for the Purpose of Acquiring Land within said County and Erecting Thereon and Furnishing a High School Building to belong to the said Board, wherein to Maintain a County High School for said Hernando County; to Authorize said Board, in Order to Procure said Loan, to Issue and Sell not Exceeding Seventy-five Thousand Dollars ($75,000.00) in Principal Amount of Interest Bearing Coupon Bonds; to make Provision for a Sinking Fund for the Retirement of said Bonds and the Interest to Become Due Thereon and to Regulate the Expenditures of the Sum Derived from the sale of Said Bonds.

Be It Enacted by the Legislature of the State of Florida:

Sec. 1. *When it shall appear necessary for the* maintenance and support of the public free schools of Hernando County, Florida, that there be erected therein a high school building to belong to said County Board wherein to maintain a county high school for said Hernando County, in order to accommodate the attendance and permit the in-

struction of the pupils of said County, entitled to attend and be instructed at such County high school, and there are no available funds in the County School fund for said County to provide for the acquisition of land and the erection and furnishing of such high school building, and the Board of Public Instruction of said County shall by resolution duly adopted and recorded in its minutes find the facts to be as aforesaid, then and thereupon said Board, in order to raise the funds required to provide for the acquisition of land within said County and the erection thereon and furnishing of a high school building, shall be and is hereby authorized to borrow such amount of money as said Board shall determine necessary for the purposes aforesaid, not to exceed the sum of Seventy-five Thousand Dollars ($75,000.00), and pay interest upon such loan at a rate, to be determined by said Board, not in excess of six per cent (6%) per annum. In order to procure said loan, and to evidence the agreement of said Board to repay the same with interest as aforesaid, said Board shall have authority to issue and sell, not exceeding Seventy-five Thousand Dollars ($75,000.00) in principal amount, of interest bearing coupon bonds of said Board, to be signed by the Chairman and Secretary of the Board, to be issued with the official seal of said Board affixed, to be in such denomination or denominations, in such form and bearing such rate of interest, payable annually or semi-annually, not to exceed six per cent (6%) per annum, as said Board may provide in its resolution authorizing the issuance of said bonds. Said bonds shall be payable at such time as said Board shall determine to be expedient, except that none of said bonds shall be issued to run for a longer period of time than thirty years from the date of issue. Said bonds shall be numbered consecutively, beginning with Number One, and each bond shall have attached thereto interest coupons to evidence the interest of the principal bonds to which the same shall be attached, and it shall be sufficient for each interest coupon to bear the printed or lithographed facsimile signature of the Chairman and Secretary of said Board.

Sec. 2. The sale of the bonds herein authorized may be made either publicly or privately as said Board may determine, but none of said bonds shall be sold by said Board for less than the principal amount thereof.

Sec. 3. Said County Board shall have the power to procure the loan and issue and sell the bonds authorized under the provisions of this Act, unaffected by and independently of any existing statutes relating to the borrowing of money by said Board. Nor shall the issuance and sale of bonds authorized by this Act be deemed to constitute a borrowing of money by said Board within the meaning of the provisions of Section 458 of the Revised General Statutes of Florida, and said Board shall have authority to borrow money for the purpose authorized by said Section 458 of the Revised General Statutes unaffected by the issuance and outstanding of any bonds authorized by this Act.

Sec. 4. All moneys arising from the sale of the bonds authorized by this Act shall be applied by said County Board exclusively to the purposes for which said bonds were issued, provided, however, that after the said purposes have been carried out, if there exists any surplus arising from the sale of said bonds, such surplus may be used and applied by said Board as it may determine proper for the support and maintenance of the public free schools of said Hernando County.

Sec. 5. That whenever bonds shall be issued in the manner hereinabove indicated, it shall be the duty of the Board of County Commissioners of Hernando County, Florida, to levy annually a tax on all taxable property in the County, the amount of said tax to be determined by resolution of the Board of Public Instruction for the County of Hernando, State of Florida, and said tax when levied shall be a part of the tax provided for by Section 8 of Article 12 of the Constitution of the State of Florida, said tax to be levied for the purpose of paying the interest when due and creating a sinking fund for the payment of the principal of said bonds

at the maturity of same, which said sinking fund shall be provided for by resolution of said Board of Public Instruction before issuing bonds under any of the provisions of this Act. All taxes for the payment of interest and to create a sinking fund for the retirement of said bonds, shall be assessed, equalized and collected upon all the taxable property in the County of Hernando, State of Florida, by the same officers and in the same manner as provided by law for the assessment, equalization and collection of other county taxes. It shall be the duty of the County Tax Collector to turn over to the bank or banks of Hernando County, Florida, which shall have lawfully qualified as depositaries of the Board of Public Instruction for the County of Hernando, State of Florida, all money collected for said interest and sinking fund, to be at all times by such county depository or depositories kept and maintained in a separate fund, and said fund shall be subject to the control of the County Board of Public Instruction, for the County of Hernando, State of Florida, for the sole purpose of paying the interest due on said bonds and retiring the same at their maturity.

Sec. 6. Should it seem advisable to said Board of Public Instruction for the County of Hernando, State of Florida, to invest the sinking fund collected for the retirement of the bonds herein referred to, said Board shall have the right and the privilege so to do in the same manner and according to the terms and provisions provided by Section 594 of the Revised General Statutes of the State of Florida, governing the investment of the sinking fund accumulated for the retirement of Special Tax School District bonds.

Sec. 7. This Act shall take effect immediately upon its passage and approval of the Governor, or its becoming a law without the approval of the Governor.

Approved April 24, 1925."

APPENDIX "C".

Proceedings State Ex Rel. Vickery vs. Mowat.

On the 1st day of November, A. D. 1939, the Alternative Writ of Mandamus was filed in words and figures as follows:

IN THE CIRCUIT COURT IN AND FOR THE FOURTEENTH JUDICIAL CIRCUIT IN AND FOR BAY COUNTY, FLORIDA

Bay County.

STATE OF FLORIDA, Ex Rel. L. E. VICKERY, Relator,

vs.

D. MOWAT, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. NICHOLS and D. D. JONES, as Members of said Board of Public Instruction, Respondents.

Alternative Writ of Mandamus.

The State of Florida To:

D. Mowat, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. Nichols and D. D. Jones, as Members of said Board of Public Instruction

Greetings:

WHEREAS, by petition for an alternative writ of mandamus filed in this cause by L. E. Vickery as relator, brought in the name of the State of Florida on relation of L. E. Vickery against you, the said D. Mowat, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. Nichols and D. D. Jones, as members of said Board of Public Instruction, respondents, it has been made to appear:

1. That the Board of Public Instruction of Bay County, Florida, pursuant to resolutions of said Board duly passed, approved and adopted pursuant to and in conformity with the provisions of House Bill No. 708, Chapter 10366, Acts of the Legislature of 1925, did issue and sell certain bonds

designated Board of Public Instruction of Bay County, Florida, High School Bonds, each of said bonds being in the sum of $1,000.00, and by the terms of each of said bonds the Board of Public Instruction of Bay County, Florida, for value received, acknowledged itself to owe, and promised to pay the bearer the sum of $1,000.00, with interest thereon from the date thereof until paid, at the rate of 6% annually, payable semi-annually, on the first day of June and December of each year, upon presentation and surrender of the coupons thereto annexed as they severally became due, the said bonds and interest coupons being payable at the banking house of the National City Bank in the City of New York, State of New York.

2. That each of said bonds recited that the full faith and credit of the Board of Public Instruction of Bay County, Florida, was irrevocably pledged to the payment of same; that each of said bonds recited that it was one of a series of like bonds of like date, tenor and amount, except as to maturity, issued by the Board of Public Instruction of Bay County, Florida, for the purpose of raising funds to purchase grounds and to erect and furnish a high school building to belong to said Board of Public Instruction of Bay County, Florida, for the use and benefit of the people of Bay County, Florida, and was issued pursuant to resolution of the Board of Public Instruction of Bay County, Florida, duly passed, approved and adopted as required by law and pursuant to and in conformity with the provisions of the said Legislative Act aforesaid; that each of said bonds further recited that all acts, conditions, and things required by the law of the State of Florida by said Legislative Act aforesaid to exist, happen, and be performed precedent to and in the issuance of this bond, did exist, had happened and been performed, as required by law, and that said bond together with all other indebtedness of said Board of Public Instruction of Bay County, Florida, did not exceed any limit prescribed by the Constitution or Statutes of the State of Florida; that each of said bonds was executed under the corporate seal of said Board of Public Instruction of Bay County, Florida, signed by the Chairman of the Board, attested by the Secretary thereof.

3. That each of said bonds, including the bond of relator hereinafter mentioned was validated and confirmed by decree of the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida, rendered the 18th day of July, 1925, and bore a certificate to that effect duly signed by the Clerk of said Court.

4. That, as appears from the public records of said Bay County, Florida, prior to the passage of said Act, Chapter 10366, Acts of 1925, Bay County, Florida, had been divided into sixteen special tax school districts; that the said High School Building provided for in said Act was built and erected in Panama City, Florida, and in Tax District No. 12 of Bay County, Florida, and may be attended by any and all high school students in said Bay County.

5. That relator is the owner and holder of one of said bonds, to-wit, Bond No. 20, which became due and payable on June 1, 1934, a copy of which said bond is hereto attached and marked Exhibit "A" and made a part hereof; that each of said bonds aforesaid were and are identical in form and tenor, except as to maturity date and number thereof.

6. That relator is the owner and holder of interest coupons numbered 17 and 18 attached to said bond, which matured on December 1, 1933, and June 1, 1934, respectively, copies of which are attached hereto as Exhibits "B" and "C" respectively, and made a part hereof.

7. That there is due relator upon said bond and said interest coupons the sum of $1,060.00; that although relator has demanded payment of said bond and coupons from defendant since the maturity thereof, defendant has failed and continues to fail to pay the same or any part thereof.

8. That Section 5 of said Chapter 10366, Acts of the Legislature of Florida, 1925, among other things, provides:

"That whenever bonds shall be issued in the manner hereinabove indicated, it shall be the duty of the Board of County Commissioners of Bay County, Florida, to levy annually a tax on all taxable property in the County, the amount of said tax to be determined by resolution of the Board of Public Instruction for the County of Bay, State of

Florida, and said tax when levied shall be a part of the tax provided for by Section 8 of Article 12 of the Constitution of the State of Florida, said tax to be levied for the purpose of paying the interest when due and creating a sinking fund for the payment of the principal of said bonds at a maturity of same, which said sinking fund shall be provided for by resolution of said Board of Public Instruction before issuing bonds under any of the provisions of this Act."

9. That the said Board of Public Instruction duly determined by resolution offered, adopted, and approved by said Board, that the tax levy under said Section 8 of Article 12 of the Constitution should for the year 1939-1940 be ten mills, the maximum permitted to be levied under said Section 8, Article 12 of the Constitution of Florida, but that said Board of Public Instruction and the members thereof failed, neglected, and refused to make any provision for any part of said taxes to go into a sinking fund as provided in said Section 5 aforesaid for the purpose of retiring relator's bond or any of said bonds issued under said Act.

10. That said Board of Public Instruction and the members thereof have failed, neglected, and refused in all previous years to establish or set up a sinking fund for the retirement of bonds or coupons, or any part thereof, issued under said Act aforesaid, so that there is not now any sinking fund or any other funds in the hands of said Board of Public Instruction out of which relator's bond and interest coupons aforesaid, or any part thereof, can be paid.

11. That it is the duty of the Board of Public Instruction for the County of Bay, State of Florida, under the provisions of said Chapter 10366, Acts of Florida 1925, and under the terms of the bonds issued thereunder to levy or cause to be levied a tax on all taxable property within the County of Bay, State of Florida, including homesteads, regardless of value, sufficient in amount to pay the principal and interest of said bonds issued under said Act, and it is the duty of the said Board of Public Instruction to appropriate for the payment of the bonds and interest coupons of relator herein a sum of money sufficient in amount to pay the same, and to appropriate in their budget for the fiscal year 1939-

1940 out of the constitutional ten mills levy, which will produce a sum in excess of $20,000.00, a sum sufficient in amount to pay said bonds and interest coupons; that said Board of Public Instruction has failed to appropriate in its budget for the year 1939-1940 any sum for the payment of said bond and interest coupons herein described, and unless the said members of said Board of Public Instruction are required by this court to amend its budget so as to appropriate sufficient of said ten mills constitutional levy to the payment of said bond and interest coupons herein described, they will not do so, and relator will be unable to collect its said bond and coupons.

12. That relator is entitled to writ of this court commanding the said Board of Public Instruction and the members thereof to revise and amend its said budget so as to appropriate a sufficient amount of said constitutional ten mills levy as is necessary to pay relator's said bond and interest coupons, and relator is without remedy save by the issuance of such a writ.

Now, Therefore, we being willing that full and speedy justice shall be done in the premises do command you, D. Mowat, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. Nichols and D. D. Jones, as members of said Board of Public Instruction, to forthwith duly assemble and pass all necessary resolutions to amend your budget for the year 1939-1940 by appropriating to the payment of the bond and interest coupons of relator a sufficient amount of the constitutional ten mills tax levy, levied under Section 8, Article 12 of the Constitution of Florida, to pay the same, and do further command you, D. Mowat, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. Nichols and D. D. Jones, as members of said Board of Public Instruction, to pay over all moneys received by you from said levy for the payment of said bond and interest coupons of relator to relator or his attorney of record, as and when said taxes are collected in whole or in part, or that you appear before this court on the 1st day of November, 1939, at 10:00 o'clock A. M., and show cause why you should not be required so to do.

Witness the Honorable Ira A. Hutchinson, Judge of the above court, this the 28 day of October, A. D. 1939.

H. A. PLEDGER,
Clerk of Circuit Court in and for Bay County, Florida.

(Seal of the Circuit Court, Bay County, Florida.)

Number 20 $1000.00

Number 20 $1000.00

UNITED STATES OF AMERICA,
State of Florida,
County of Bay:

Board of Public Instruction of Bay County, Florida High School Bond.

Know All Men by These Presents, That the Board of Public Instruction of the County of Bay, State of Florida, for value received, hereby acknowledges itself to owe, and promises to pay to the bearer on the first day of June, A. D. 1934, the principal sum of One Thousand Dollars with interest thereon from the date hereof until paid, at the rate of six per cent (6%) per annum, payable semi-annually on the first day of June and the first day of December of each year, upon presentation and surrender of the interest coupons hereto annexed, as they severally become due. Both principal and interest of this bond are payable at the banking house of the National City Bank in the city of New York, State of New York, and for the payment of the principal of this bond and the interest thereon when due, the full faith, credit and resources of the Board of Public Instruction of Bay County, Florida, are hereby irrevocably pledged.

This Bond is one of a series of bonds of like date, tenor and amount, except as to maturity, numbered One to One Hundred (1 to 100) inclusive, issued by the Board of Public Instruction of Bay County, Florida, for the purpose of

raising funds to purchase school grounds and to erect and furnish a High School Building to belong to the said Board of Public Instruction of Bay County, Florida, for the use and benefit of the people of Bay County, Florida and is issued pursuant to resolutions of the Board of Public Instruction of Bay County, Florida, duly passed, approved and adopted, as required by law, and in pursuance to and in conformity with the provisions of House Bill No. 708, Acts of 1925, approved 28th day of May, 1925.

It Is Hereby certified, recited and declared that all acts, conditions and things required by the law of the State of Florida by said House Bill No. 708, Acts of 1925, to exist, happen and be performed precedent to and in the issuance of this bond exist, have happened and been performed in due and regular time form and manner, as required by law, and that this series of bonds, together with all other indebtedness of said Board of Public Instruction, does not exceed any limit prescribed by the Constitution or Statutes of the State of Florida.

In Witness Whereof, The Board of Public Instruction of Bay County, Florida, have caused this bond to be executed by the Chairman of said Board, attested by the Secretary of said Board and its corporate seal to be hereunto affixed and has caused the interest coupons hereto attached to be executed with the lithographed facsimile signatures of said Chairman and Secretary, respectively, and this bond to be dated the first day of June 1925.

R. D. MURRAY,
Chairman Board of Public Instruction of Bay County, Florida.

Attest:

C. C. MATHIS,
Sec'y Board of Public Instruction of Bay County, Florida.

(Seal.)

Endorsed on the back as follows: United States of America. Number 20. Board of Public Instruction of Bay County, Florida, State of Florida, County of Bay. High

School Bond $1,000. Per 6 cent. Principal Due June 1, 1934, Interest Payable June 1st & December 1st. Principal and Interest Payable at the Banking House of the National City Bank In the City and State of New York. Validated and confirmed by decree of the Circuit Court of the Fourteenth Judicial Circuit in and for Bay County, Florida, rendered the 18th day of July 1925. W. H. Marshall, Clerk Circuit Court.

Exhibit A.

$30.00.

On the first day of Dec. 1933 The Board of Public Instruction of Bay County, Florida, will pay to the bearer at the Banking House of the National City Bank of the City of New York the sum of thirty dollars ($30.00) being six months interest then due on its High School Bond No. 20.

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R. D. MURRAY,
Chairman Board of Public Instruction.
Attest: C. C. Mathis, Secretary.

Exhibit B.

$30.00.

On the first day of June, 1934 the Board of Public Instruction of Bay County, Florida, will pay to the bearer at the Banking House of the National City Bank of the City of New York the sum of thirty dollars ($30.00) being six months interest then due on its High School Bond No. 20.

R. D. MURRAY,
Chairman Board of Public Instruction.
Attest: C. C. Mathis, Secretary.

Exhibit C.

On the 1st day of November, A. D. 1939, the Final Judgment quashing Alternative Writ and entering Final Judgment was filed; said Final Judgment being recorded in

Circuit Court Minute Book 5, Page 375, in words and figures as follows:

IN THE CIRCUIT COURT IN AND FOR THE FOURTEENTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY.

Bay County

STATE OF FLORIDA, EX REL., L. E. VICKERY, *Relator*,

v.

D. MOWAT, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. NICHOLS and D. D. JONES, as Members of the Said Board of Public Instruction, *Respondents.*

This cause coming on before the Court to be heard upon motion to quash filed by the respondents herein, and the Court having heard arguments of counsel, and being fully advised in the premises, it is, therefore now

Considered, Ordered and Adjudged that said motion be and the same is hereby granted, and that said alternative writ of mandamus issued herein be and the same is hereby quashed, set aside and annulled. Relator having announced he did not desire to amend or further plead, it is further

Considered, Ordered and Adjudged that respondents go hence without day and that relator take nothing by this writ; that respondents do have and recover from the relator their costs in this behalf to be taxed by the clerk of this court.

Done and Ordered at Panama City, Florida, this the 1st day of November, A. D. 1939.

IRA A. HUTCHISON,
Judge.

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1939

Bay County

STATE OF FLORIDA, EX REL., L. E. VICKERY, *Appellant*,

vs.

D. MOWAT, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. NICHOLS and D. D. JONES, as Members of Said Board of Public Instruction, *Appellees.*

TERRELL, *C. J.:*

The Appellant as Relator and holder of bond Number 20, issued by the Board of Public Instruction of Bay County pursuant to Chapter 10366, Acts of 1925, brought this proceeding in mandamus against the said Board of Public Instruction to require it to impose a tax on all the taxable property in Bay County sufficient to pay the principal and interest on said bond and others of the same issue. A motion to quash the alternative writ was granted, final decree was entered, and this writ of error was prosecuted.

In fine, Chapter 10366, authorizes the Board of Public Instruction of Bay County to issue bonds not to exceed $100,000 in amount for the purpose of erecting a central high school building for the use of the County, the said bonds to run not exceeding thirty years and to be retired serially. A portion of the County school fund raised under Section Eight of Article Twelve of the Constitution of Florida, was appropriated under the act to pay interest on and retire said bonds.

The sole question raised in the Court below and brought here for determination is the power of the legislature to authorize the use of funds raised under Section Eight of Article Twelve of the Constitution to pay interest on and retire the bonds so issued.

It appears that the bonds brought in question were issued in June, 1925, and were validated by decree of the Circuit Court, that a County high school building was constructed with the proceeds of said bonds and has for years been in use by the County, that interest was paid on the bonds until 1931, when further payments were restrained by decree of the Circuit Court, that said restraining order was later dissolved but no further payments have been made on principal or interest of the bonds and so far as the record discloses the school term has not been diminished.

It is contended by appellee that the judgment below should be affirmed because all school funds raised under Section Eight of Article Twelve must be used for the support and maintenance of the public schools of the county and that no part of it can be used for the construction of buildings. This contention is supported by the decisions of this Court. See State *v.* Board of Public Instruction of Dade County, 126 Fla. 142, 170 So. 602, where this question is fully covered, and we pointed out that the Constitution provided a complete scheme for the support of the public schools and for the construction of school buildings.

We do not in any sense depart from the law as stated in the last cited case. If the payment of interest and retirement of the bonds brought in question with the funds appropriated tended to disrupt the school term, we might be forced to hold them invalid. The record, however, makes no such showing and for all that may be gathered from it, quite the contrary is the case.

Chapter 10366 does not appropriate all the funds possible to be raised under Section Eight of Article Twelve to pay interest on and retire said bonds. It only appropriates a portion of these funds and it is not shown that the use of the funds appropriated for building purposes materially interfered with the support of the public schools of the County. In fact, it is shown that the schools were continued for six years and the bonds were serviced for a like period and the service on the bonds was cut off because of the injunction previously referred to.

While we do not approve this method of financing the construction of high school buildings, at the same time after bonds are issued and validated and have been in the hands

of innocent purchasers for fourteen years and the county has had the use of the building for that time, we must decline to hold them invalid at the instance of the Board of Public Instruction when only a portion of the funds raised under Section Eight of Article Twelve are appropriated to service them and it is not shown that the support of the school was materially affected.

When the support of the public schools of the county is provided for, there can be no objection to using any remaining portion of the funds raised under Section Eight of Article Twelve to construct a countywide high school building. State *v.* Board of Public Instruction, 86 Fla. 254, 97 So. 384. A board of public instruction should not be permitted under the guise of a constitutional guaranty to provide a facility like a high school building for the county and then turn around and use the same constitutional guaranty to defeat its obligation to pay for the facility so acquired and being used for public school purposes.

If this can be done, sanctity of contract becomes nothing more than a windy platitude. It extracts the moral element from the law, the property that saves it from becoming effete and putrid. Bereft of its moral philosophy, the fundamental and statutory law of a democracy becomes as bread without salt, as a woman without charm, or a man without honor. The spirit of it has departed and nothing remains but dry bones too inert to rattle.

Having reached this conclusion, it follows that the judgment below must be and is hereby reversed.

Reversed.

WHITFIELD, P. J., and CHAPMAN, J. J., concur.

BROWN, BUFORD and THOMAS, J. J., dissent.

IN THE SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1940, EN BANC

Bay County

STATE OF FLORIDA, EX REL., L. E. VICKERY, *Appellant*,

vs.

D. MOWAT, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. NICHOLS and D. D. JONES, as Members of said Board of Public Instruction, *Appellees.*

Opinion Filed February 9, 1940

An Appeal from the Circuit Court for Bay County, Ira A. Hutchison, Judge, J. M. & H. P. Sapp, for Appellant; Stokes & Douglas and Mabry, Reaves, Carlton & White, for Appellees.

Per CURIAM:

In this cause Mr. Chief Justice Terrell, Mr. Justice Whitford and Mr. Justice Chapman are of the opinion that the decree in this cause should be reversed while Mr. Justice Brown, Mr. Justice Buford and Mr. Justice Thomas are of the opinion that the said decree should be affirmed. When the members of the Supreme Court sitting six members in a body and after full consultation, it appears that the members of the Court are permanently and equally divided in opinion as to whether the decree should be affirmed or reversed, and there is no prospect of an immediate change in the personnel of the Court, the decree should be affirmed; therefore it is considered, ordered and decreed under the authority of State ex rel. Hampton *v.* McClung, 47 Fla. 224, 37 So. R. 51, that the decree of the Circuit Court in this cause be and the same is hereby affirmed.

Affirmed.

TERRELL, C. J., WHITFIELD, BROWN, BUFORD, CHAPMAN and THOMAS, J.J., concur.

I, Guyte P. McCord, Clerk of the Supreme Court of Florida, do hereby certify that the above and foregoing is a true and correct copy of the Alternative Writ of Manda-

mus including copy of the Bond and Coupon involved and attached as Exhibits thereto; copy of the Order of the Court Below upon the Motion to Quash filed by Respondents; copy of Opinion written by Chief Justice Terrell and copy of Order of Court Affirming the Circuit Court in and for Bay County, Florida in that certain cause recently pending in this Court wherein the State of Florida ex rel. L. E. Vickery was Appellant and D. Mowat, as Chairman of the Board of Public Instruction of Bay County, Florida, W. R. Nichols and D. D. Jones, as Members of said Board of Public Instruction were Appellees as the same appears among the Records and Files in my said Office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Supreme Court at Tallahassee, Florida, this 20th day of May, A. D. 1940.

[Supreme Court Seal.]

GUYTE P. MCCORD,
Clerk Supreme Court of Florida.

APPENDIX "D".

Statute Under Which Vickery vs. Mowat Bonds Were Issued.

CHAPTER 10,366—(No. 344).

AN ACT to Authorize the Board of Public Instruction of Bay County, Florida, to Procure a Loan of not Exceeding One Hundred Thousand Dollars ($100,000.00), and to Pay Interest Thereon at a rate not Exceeding Six Per cent (6%) per Annum for the Purpose of Erecting and Furnishing a High School Building to Belong to the Said Board, Wherein to Maintain a County High School for Said Bay County; To Authorize Said Board, in order to Procure Said Loan, to Issue and Sell Not Exceeding One Hundred Thousand Dollars ($100,000.00) in Principal Amount of Interest Bearing Coupon Bonds; to Make Provision for a Sinking Fund for the Retirement of said Bonds and the

Interest to Become Due Thereon, and to regulate the Expenditure of the Sum Derived from the Sale of Said Bonds.

Be It Enacted by the Legislature of the State of Florida:

Section 1. When it shall appear necessary for the maintenance and support of the public free school of Bay County, Florida, that there be erected therein a high school building to belong to the County Board of Public Instruction of said County wherein to maintain the County High School for said Bay County, in order to accommodate the attendance and permit the instruction of the pupils of said County entitled to attend and be instructed at such County High School, and there are no available funds in the County School Fund of said County to provide for the erection and furnishing of such high school building, and the Board of Public Instruction of said County shall by resolution duly adopted and recorded in its minutes find the facts to be as aforesaid, then and thereupon said Board, in order to raise the funds required to provide for the erection thereof and furnishing of a high school building shall be and is hereby authorized to borrow such amount of money as said Board shall determine necessary for the purposes aforesaid, not to exceed the sum of One Hundred Thousand Dollars ($100,000.00), and to pay interest upon said loan at a rate, to be determined by said Board, not in excess of six per cent (6%) per annum. In order to procure said loan, and to evidence the agreement of said Board to repay the same with interest as aforesaid, said Board shall have authority to issue and sell not exceeding One Hundred Thousand Dollars ($100,000.00) in principal amount of interest bearing coupon bonds of said Board, to be signed by the Chairman and Secretary of said Board, to be issued with the official seal of said Board affixed, to be in such denomination or denominations, in such form and bearing such rate of interest, payable annually or semi-annually, not to exceed six per cent (6%) per annum, as said Board may provide in its resolution authorizing the issuance of said Bonds. Said bonds shall be payable within thirty (30) years from the date of issuance in annual installments which shall commence not more than three (3) years after the date of issue.

Each annual installment shall be not less than three per cent (3%) of the total amount of the issue. Said Bonds shall be numbered consecutively, beginning with the number one (1) and each bond shall have attached thereto interest coupons to evidence the interest on the principal thereof, and it shall be sufficient for each interest coupon to bear the printed or lithographed facsimile signatures of the Chairman and Secretary of said Board.

Sec. 2. The sale of the bonds herein authorized may be made either publicly or privately as said Board may determine, but none of said bonds shall be sold by said Board for less than the principal amount thereof. All funds realized from the sale of said bonds shall be deposited in the depositories as named by said Board, as the custodians thereof, and drawn out on proper warrants for the purpose of paying for the work and material, as the same progresses, and the necessary expenses incident to the issue, sale and delivery of said bonds.

Sec. 3. Said County Board shall have the power to procure the loan and issue and sell the bonds authorized under the provisions of this Act, unaffected by and independently of any existing statutes relating to the borrowing of money by said Board. Nor shall the issuance and sale of the bonds authorized by this act be deemed to constitute a borrowing of money by said Board within the meaning of the provisions of Section 458 of the Revised General Statutes of Florida, and said Board shall have authority to borrow money for the purpose authorized by said Section 458 of the Revised General Statutes unaffected by the issuance and outstanding of any bonds authorized by this act.

Sec. 4. All moneys arising from the sale of the bonds authorized by this Act shall be applied by said County Board exclusively to the purpose for which said bonds were issued, provided, however, that after the said purposes have been carried out, if there exists any surplus arising from the sale of said bonds, such surplus may be used and applied by said Board as it may determine proper for the support and maintenance of the public free schools of said Bay County.

Sec. 5. That whenever bonds shall be issued in the manner hereinabove indicated, it shall be the duty of the Board of County Commissioners of Bay County, Florida, to levy annually a tax on all taxable property in the County, the amount of said tax to be determined by resolution of the Board of Public Instruction for the County of Bay, State of Florida, and said tax when levied shall be a part of the tax provided for by Section 8 of Article 12 of the Constitution of the State of Florida, said tax to be levied for the purpose of paying the interest when due and creating a sinking fund for the payment of the principal of said bonds at the maturity of same, which said sinking fund shall be provided for by resolution of said Board of Public Instruction before issuing bonds under any of the provisions of this Act. All Taxes for the payment of interest and to create a sinking fund for the retirement of said bonds, shall be assessed, equalized and collected upon all taxable property in the County of Bay, State of Florida, by the same officers and in the same manner as provided by the law for the assessment, equalization and collection of other County taxes. It shall be the duty of the County Tax Collector to turn over to the bank or banks of Bay County, Florida, which shall have lawfully qualified as depositories of the County Board of Public Instruction of the County of Bay, State of Florida, all money collected for said interest and sinking fund, to be at all times by such County Depository or Depositories kept and maintained in a separate fund, and said fund shall be subject to the control of said County Board of Public Instruction for the sole purpose of paying the interest due on said bonds and retiring the same at their maturity.

Sec. 6. Should it seem advisable to said County Board of Public Instruction of Bay County, State of Florida, to invest the sinking fund collected for the retirement of the bonds herein referred to, said Board shall have the right and privilege so to do in the same manner according to the terms and provisions provided by Section 594 of the Revised General Statutes of the State of Florida governing the investment of the sinking fund accumulated for the retirement of Special Tax School District Bonds.

Sec. 7. This Act shall take effect immediately upon its passage and approval by the Governor or upon its becoming a law without the approval of the Governor.

APPENDIX "E".

Statute Under Which Warren vs. Hillsborough County Bonds Were Issued.

CHAPTER 9464—(No. 346).

AN ACT to Authorize the Board of Public Instruction of Hillsborough County, Florida, to procure a Loan of not exceeding Two Hundred Thousand Dollars ($200,000.00) and pay interest thereon at a rate not exceeding seven per cent (7%) per annum, for the purpose of enlarging the high school building belonging to the said Board, located in the City of Tampa, and wherein is maintained the county high school for said Hillsborough County, and for the purpose of furnishing such enlargement of said high school building; to authorize said Board in order to procure said loan, to issue and sell not exceeding Two Hundred Thousand ($200,000.00) in principal amount of interest bearing coupon warrants; to make provision for a sinking fund for the retirement of said warrants and the interest to become due thereon; to regulate the expenditure of the sum derived from the sale of said warrants; and to provide for the validation of said warrants.

Be It Enacted by the Legislature of the State of Florida:

Section 1. When it shall appear necessary for the maintenance and support of the public free schools of Hillsborough County, Florida, that the high school building, located in the City of Tampa, belonging to said County Board and wherein is maintained the county high school for said Hillsborough County, be enlarged and such enlargement thereof be furnished, in order to accommodate the attendance and permit the instruction of the pupils of said county, entitled to attend and be instructed at such county high

school, and there are no available funds in the county school fund of said county to provide the enlargement of said building and the furnishing of such enlargement, and the Board of Public Instruction of said county shall by resolution duly adopted and recorded in its minutes find the facts to be as aforesaid, then and thereupon, said Board, in order to raise the funds required to provide the necessary enlargement of said high school building and furnish such enlargement, shall be and is hereby authorized to borrow such amount of money as said Board shall determine necessary for the purpose aforesaid, not to exceed the sum of Two Hundred Thousand Dollars ($200,000.00), and pay interest upon such loan at a rate, to be determined by said Board, not in excess of seven per cent (7%) per annum. In order to procure said loan, and to evidence the agreement of said Board to repay the same with interest as aforesaid, said Board shall have authority to issue and sell, not exceeding Two Hundred Thousand Dollars ($200,000.00) in principal amount, of interest bearing coupon warrants of said Board, to be signed by the Chairman and Secretary of the Board, to be issued with the official seal of said Board affixed, to be in such denomination or denominations, in such form and bearing such rate of interest, payable annually or semi-annually, not to exceed seven per cent (7%) per annum, as said Board may provide in its resolution authorizing the issuance of said warrants. Said warrants shall be payable at such time as said Board shall determine to be expedient, except that none of said warrants shall be issued to run for a longer period of time than fifteen years from the date of issue. Said warrants shall be numbered consecutively, beginning with Number One, and each warrant shall have attached thereto interest coupons, to evidence the interest to become due thereon prior to maturity, each coupon shall bear the number of the principal warrant to which the same shall be attached, and it shall be sufficient for each interest coupon to bear the printed or lithographed facsimile signature of the Chairman and Secretary of said Board. Said warrants and interest coupons shall be issued upon and payable out of the county school fund of said Hillsborough County, be

payable to bearer, and shall be directed to any depository of the county school fund of said Hillsborough County. Said Board may, in its discretion, when authorizing the issuance and sale of said warrants, provide that all or any part of said warrants may be retired on any interest due date, before maturity, upon payment of each principal warrant with accrued interest and an additional premium of not exceeding one per cent (1%) of the warrant or warrants so retired before their maturity.

Sec. 2. Before the sale and delivery of any warrants authorized by this Act, said Board shall by resolution provide for a sinking fund for the payment of said warrants and the interest thereon, as the same become due and payable, which sinking fund shall be provided out of the county school fund arising each year, until all said warrants are retired, provided that said sinking fund shall not exceed in any year the equivalent of one-half of one mill upon the dollar on all the taxable property in said Hillsborough County. It shall be the duty of said Board each year until all the warrants and interest due thereon issued under the authority of this Act are retired, to set apart out of the county school fund of said county a sufficient amount of money to pay all of said warrants and interest coupons becoming due during said year, and out of the amount so set aside annually, to pay and retire all of said warrants and interest coupons becoming due during such year, provided, that said Board shall not be required annually to set aside for said purpose an amount in excess of the equivalent of one-half of one mill upon the dollar on all the taxable property in said Hillsborough County. The sum required to be set aside annually as aforesaid shall not be subject to be used otherwise or applied than as above provided, except that any excess existing in the amount so set aside, after the warrants and interest coupons have been paid for the payment of which said amount was so provided, may be applied as said Board shall direct for any other proper use of the schools of said county.

Sec. 3. The sale of the warrants herein authorized may be made either publicly or privately as said Board may

determine, but none of said warrants shall be sold by said Board at less than the par value thereof.

Sec. 4. Said County Board shall have the power to procure the loan and issue and sell the warrants authorized under the provisions of this Act, unaffected by and independently of any existing provisions of law relating to the borrowing of money by said Board. Nor shall the issuance and sale of the warrants authorized by this Act be deemed to constitute a borrow of money by said Board within the meaning of the provisions of Section 458 of the Revised General Statutes of Florida, and said Board shall have authority to borrow money for the purpose authorized by said Section 458 of the Revised General Statutes unaffected by the issuance and outstanding of any warrants authorized by this Act.

Sec. 5. All moneys arising from the sale of the warrants authorized by this Act shall be applied by said County Board exclusively to the purposes for which said warrants were issued, provided however, that after the said purposes have been carried out, if there exists any surplus arising from the sale of said warrants, such surplus may be used and applied by said Board as it may determine proper for the support and maintenance of the public free schools of said Hillsborough County.

Sec. 6. Said Board may, if it deems the same expedient, proceed to have the warrants hereby authorized validated under the provisions of Sections 3296 to 3301 inclusive of the Revised General Statutes of the State of Florida upon petition filed by said County Board.

Sec. 7. This Act shall take effect immediately upon its passage and approval by the Governor, or its becoming a law without the approval of the Governor.

Became a law without the approval of the Governor.

APPENDIX "F".

Amendment to Florida Constitution Adding Seventh Judge.

HOUSE JOINT RESOLUTION No. 54.

A Joint Resolution Proposing an Amendment to Section 2 and to Section 4 of Article V of the Constitution of Florida Relating to the Judiciary Department.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment of Section 2 and Section 4, respectively, of Article V of the Constitution of the State of Florida, be, and the same is hereby agreed to, and shall be submitted to the electors of the State of Florida at the next general election to be held on the first Tuesday after the first Monday in November, 1940, for ratification or rejection.

Section 2. (a) The Supreme Court shall consist of Seven (7) Justices and the term of office of each Justice shall be six years; no term of any incumbent shall be affected by this amendment.

(b) Each Justice of the Supreme Court shall be elected by the qualified electors of the State at the time and places of voting for members of the legislature, at the general election next preceding the expiration of each term of such office.

(c) In the event of the ratification of this amendment it shall thereupon be the duty of the then Governor to appoint one additional Justice of the Supreme Court and he shall hold office from the date of his appointment until Tuesday after the first Monday in January, 1943, and his successor shall be elected at the general election in 1942 to hold office for a term of six years beginning Tuesday after the first Monday in January, 1943.

(d) The successors of the Justices of the Supreme Court shall be elected at the general election next preceding the expiration of their respective terms of office, but in event of a vacancy in office of any Justice and there be an unexpired term the successor shall be elected for the balance of the unexpired term.

Section 4. (a) The Supreme Court may hear, consider and determine cases and exercise all its powers and juris-

diction as a single body in which case a majority of the members of the Court shall constitute a quorum for the dispatch of business; or it may exercise its powers and jurisdiction in divisions.

(b) The Circuit Judges shall at all times be subject to call to the Supreme Court by that Court or the Chief Justice thereof, and during the call shall be members thereof as associate justices to act in place of any absent, disqualified or disabled justice or for assignment to a division, but no division shall include more than one Circuit Judge. A division shall consist of three members of said court exclusive of the Chief Justice, and the judgment of a division concurred in by the Chief Justice shall be the judgment of the Court unless such case involves (1) capital punishment, or (2) the determination of a State or Federal constitutional question wherein shall be brought into controversy the constitutionality of a Federal or State statute, rule, regulation or municipal ordinance, or (3) there be a dissent to the proposed judgment of a division by a member thereof or the Chief Justice, or (4) ordered by the Chief Justice to be considered by two divisions; whereupon it shall require the consideration of two divisions and the Chief Justice.

(c) The Chief Justice shall be the chief administrative officer of the Court and responsible for the dispatch of business and procuring consistent decisions; he shall not be required to examine the record of a cause but may accept the conclusions of fact found by a division and state in the opinion or accompanying statement and act upon the law so stated and discussed and its application to such fact, but in event of an equal division between those members properly considering a cause, he shall examine the record and participate therein as other justices. In the event the Chief Justice be unable to act for any cause the Justice longest in continuous service and able to act shall act instead with like effect.

Filed in Office Secretary of State, June 12, 1939.

Adopted at General Election 1940, and Seventh Justice appointed November 25, 1940. See list of Florida Justices front 198 Southern Reporter.

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